THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.18348 of 1999

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Dated : 14-09-2005

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Between:

J.Yesuratnam.

.. **PETITIONERS**

AND

The Union of India and others.

.. RESPONDENTS

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ORDER:

The grievance of the petitioner in this writ petition is that despite his having completed, in aggregate, fifteen years of service in the Indian Army, which entitles him for military pension, he has not been extended the said benefit.

The facts, to the extent necessary for this writ petition, are that the petitioner joined in the Indian Army as Sepoy (Stipendary Soldier) on 22-08-1943 and his services was terminated on 22-05-1947. He was again taken into service on 15-07-1948 and worked, as such, till his services were terminated on 20-11-1954. The petitioner again joined in service on 14-07-1958 and worked till his services were terminated on 13-07-1965. The petitioner contends that the total service put in by him in the Indian Army was for a period of seventeen (17) years, one (1) month and (10) ten days, which entitles him for military pension.

During the pendency of the writ petition, the fourth respondent vide proceedings No.PEN/2533820/CC/31, dated 05-11-1998, informed the petitioner that his service documents had already been destroyed being a non-pensioner case, as the service documents of non-pensioners are retained only for 25 years

from the date of discharge as per para 595 of Regulations for the Army (1987 Revised Edition). The petitioner was informed that as per the entries recorded in the Long Roll maintained by the office, he was re-enrolled in the Defence Security Corps on 14-07-1958 and discharged from service on 13-07-1965 (AN) on completion of his engagement, that his former service from 22-08-1943 to 22-05-1947 was also taken into account for grant of Service Gratuity, that he had an aggregate service of ten (10) years and 274 days (including both spells of service i.e., former and DSC), for which he was paid a sum of Rs.385/- on account of Service Gratuity at the time of his discharge from DSC service, as per Rule 132 of Pension Regulations for the Army Part I (1961), the minimum period of qualifying service, actually rendered and required for earning service pension is fifteen (15) years, and as the petitioner had not completed 15 years of minimum mandatory qualifying service, he was not entitled to get service pension within the frame work of rules on the subject. The petitioner was further informed that there was no provision for grant of 'War Pension' as desired, that his military service with Madras Regiment from 15-07-1948 to 20-11-1954 was neither having any documentary evidence nor had it been recorded in the Long Roll maintained by the office.

There is no dispute that the petitioner had served in the Indian Army, in different units, during the period from 22-08-1943 till 22-05-1947 and again from 14-07-1958 till 13-07-1965. Both these two spells put together would amount to a service of ten (10) years and 274 days, which falls short of the minimum required 15 years of service for being conferred the benefit of military pension. The entire dispute revolves around the period from 15-07-1948 to 20-11-1954, (or 26-11-1954 as contended by the petitioner). While the petitioner's submission is that he had rendered service with the Madras Regiment during the said period, it is the case of the respondents that there is no record to show that he had served during the said period.

Sri K.G.Krishna Murty, learned Central Standing Counsel for the respondents, would take the plea of laches and contend that the inordinate delay in filing the writ petition would disentitle the petitioner from military pension. It is also contended that the petitioner had not disclosed his second spell of service while being appointed in the third spell. There is no force in this submission of the learned Central Government Standing counsel that the writ petition has been filed belatedly. The proceedings, dated 05-11-1998, i.e., the order passed during the pendency of the writ petition, does not take shelter on this technical plea. Moreover, while dealing with the case of a soldier, who seeks military pension for services rendered in the defence of the nation, I am not inclined to throw the writ petition out solely on the ground of laches. With regards the other contention that the petitioner had suppressed his second spell of service while seeking engagement in the third spell, Sri J.M.Naidu, learned counsel for the petitioner, would submit that this contention is factually incorrect, since the service records of the petitioner would clearly disclose that he had disclosed his second spell while seeking engagement during the third spell. Learned counsel places before this court the original certificate of service, which is said to have been issued by the competent authority, which does reflect the petitioner having served during the period, wherein, the date of enrollment was mentioned as15-07-1948 and the date of discharge was mentioned as 26-11-1954 (AN).

Sri K.G.Krishna Murthy, learned Central Government Standing Counsel, would, however, submit that in the absence of verification, it cannot be said as to whether this service certificate is genuine or not. Questions as to whether the service certificate is genuine and the petitioner had, indeed, served during the period 15-07-1948 to 26-11-1954, in which event the aggregate service rendered by him in the Indian Army would be for a period of 17 years one month and 15 days, more than the minimum required 15 years of service, whether the rules merely require completion

of aggregate service of 15 years to be reckoned for the purpose of military pension or whether the service of 15 years is required to be continuous and uninterrupted, are all matters for the competent authority to examine and determine, on verification of the original records to be produced by the petitioner.

Sri J.M.Naidu, learned counsel for the petitioner, submits that the petitioner is ready and willing to approach the respondents and place the original records for their perusal. Since he is a retired employee, presently residing at Vijayawada, I consider it appropriate to permit the petitioner to submit a detailed representation to the respondents, enclosing a copy of the certificate of service, which has now been produced before this court. On receipt of the said representation, the respondents, if they consider it necessary to do so, shall inform the petitioner of the place and time at which he is required to produce the original records and on examining thereof, and in case, the certificate is found to be genuine, the respondents shall consider and take appropriate decision with regards grant of military pension to the petitioner. The petitioner shall submit his representation within two weeks from the date of receipt of a copy of this order. The entire exercise, culminating in the decision of the respondents, shall be completed within a period of four months from the date of receipt of the representation submitted by the petitioner.

The writ petition is accordingly disposed of. No order as to costs.

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RAMESH RANGANATHAN, J

Date: 14-09-2005

Prv